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November 12, 1998

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Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Written Ex Parte Presentation of GE American
Communications, Inc., MM Docket No. 93-25**

Dear Ms. Salas:

Enclosed on behalf of GE American Communications, Inc. ("GE Americom"), pursuant to Section 1.1206(b)(1) of the Commission's rules, are two copies of a written ex parte presentation regarding the above-captioned docket. The ex parte presentation was sent by fax earlier today to the following Commission personnel: Ari Fitzgerald in Chairman Kennard's office, Anita Wallgren in Commissioner Ness's office, Jane Mago in Commissioner Powell's office, Rick Chessen in Commissioner Tristani's office, and Helgi Walker in Commissioner Furchtgott-Roth's office.

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Please address any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. A. Hastings', with a stylized flourish at the end.

Karis A. Hastings
Counsel for GE American
Communications, Inc.

Enclosures

cc: Ari Fitzgerald
Jane Mago
Anita Wallgren
Rick Chesson
Helgi Walker

PUBLIC INTEREST PROGRAMMING OBLIGATIONS DO NOT APPLY TO FIXED SATELLITE OPERATORS

Reaffirming the Commission's Tentative Conclusion

I. THE STATUTE IMPOSES OBLIGATIONS ON DTH PROGRAM DISTRIBUTORS

The statute provides that public interest obligations apply to:

any *distributor* who controls a minimum number of channels . . . using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.
47 U.S.C. § 335(B)(5)(a)(ii) (emphasis added).

The Commission recognized in the *Notice* that under this definition, the obligation for complying with public interest requirements rests on the programming distributor, not on a Part 25 fixed satellite licensee. *See Notice*, 8 FCC Rcd 1589, 1592.

- GE Americom and other Part 25 licensees are not “distributors” of video programming, and do not “use” Ku-band satellite systems to “provide” video programming.
- A Part 25 licensee merely operates a satellite for the benefit of all customers, regardless of the type of communications such customers then choose to transmit over the satellite.
- DBS satellite licensees are different because they do distribute program content themselves. Congress recognized this, and expressly stated in Section 335(B)(5)(a)(i) that for services provided using DBS satellites, obligations apply to the “licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations.” If Congress had intended to make non-DBS Part 25 licensees subject to the statutory requirements, it could have used parallel language.

- The *Notice* was correct that when a *customer* uses a Part 25 satellite to distribute DTH programming, that *customer* is subject to the statutory requirements. The obligation does not apply to the satellite operator.
- GE Americom's interpretation is consistent with other statutory and regulatory definitions. *See, e.g.*, 47 U.S.C. § 602(13); 17 U.S.C. § 119; *Closed Captioning Order*, 9 CR 412, 425 (1997).

II. PRACTICAL CONSIDERATIONS ALSO SUPPORT GE AMERICOM'S INTERPRETATION OF THE STATUTE

Imposing public service obligations on programming distributors, rather than Part 25 satellite capacity providers, is also mandated by practical concerns. Simply stated, an entity such as GE Americom that makes bare transponder capacity available is in no position to ensure compliance with the statutory requirements.

- GE Americom has no distribution infrastructure in place to offer public interest programming.
- GE Americom does not control -- or necessarily even know -- when a customer uses GE satellite capacity to deliver DTH video. Imposing carriage obligations on GE Americom could disrupt its ability to serve non-DTH customers because an unrelated customer has decided to enter the DTH business or expand its DTH operations.
- The Commission has adequate tools available to enforce the statutory requirements against non-licensees. The statute clearly gives the Commission jurisdiction over non-licensed DTH distributors, and the Commission has the ability to impose forfeitures and issue cease and desist orders if such non-licensees violate the Communications Act.

III. ADOPTION OF THIS INTERPRETATION WILL NOT IMPEDE THE DELIVERY OF PUBLIC INTEREST PROGRAMMING

- The amount of capacity to be used for public service is not affected -- only the party responsible for meeting that obligation.
- The statutory language and clear Congressional intent properly imposes responsibility on distributors of DTH programming, and not Part 25 satellite licensees, because DTH entities are in the best position to ensure that the obligations are fulfilled.